

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Maurice McNeil,)
Plaintiff,)
vs.) Civil Action No. 09-825
City of Pittsburgh, Pittsburgh Bureau of)
Police – Department of Public Safety,)
Nathan Harper, Allegheny County, Dan)
Onorato, Stephen A. Zappala, Jr.,)
Allegheny County District Attorney)
Detectives, Terrance O’Leary, Carl)
Schradder, William Friburger, Robert L.)
Kavals, Eric J. Harper, Wesley McClellan,)
Phillip Mercurio, Michael Horgan, James)
Stocker,)
Defendants.)

AMBROSE, Senior District Judge

MEMORANDUM ORDER OF COURT

Plaintiff, Maurice McNeil (“McNeil” or “Plaintiff”), filed a Complaint against Defendants City of Pittsburgh, Pittsburgh Bureau of Police – Department of Public Safety, Nathan Harper, Allegheny County, Dan Onorato, Stephen A. Zappala, Jr., Allegheny County District Attorney Detectives, Terrance O’Leary, Carl Schradder, William Friburger, Robert L. Kavals, Eric J. Harper, Wesley McClellan, Phillip Mercurio, Michael Horgan, and James Stocker, in the Court of Common Pleas of Allegheny County on or about May 29, 2009. (Docket No. 1, Ex. A). On June 24, 2009, Defendants City of Pittsburgh, Pittsburgh Bureau of Police – Department of Public Safety, and Nathan Harper (“City Defendants”) removed the case to this Court. (Docket No. 1). On July 6, 2009, the City Defendants filed an Answer to the Complaint and Affirmative Defenses. (Docket No. 2).

On October 31, 2011, Defendants City of Pittsburgh Police Officers, Carl Shradder (Carlos Shrader), William Friburger, Robert L. Kavals, Eric J. Harper (Harpster), and Phillip Mercurio (“Officer Defendants”), filed a Motion to Dismiss pursuant to 12(b)(5) arguing that Plaintiff failed to serve sufficient process on them. (Docket No. 3). At a status conference held in this case on November 7, 2011 (Docket No. 4), Plaintiff’s counsel agreed that the only service made was on the City Defendants. Plaintiff’s counsel also represented to the Court that he is currently unable to locate Plaintiff. Plaintiff did not file any response to the Motion to Dismiss.

On November 21, 2011, I granted the Officer Defendants’ Motion to Dismiss and dismissed the Officer Defendants from this action without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (Docket No. 5). On that same date, I also issued an Order to Show Cause why Defendants Allegheny County, Dan Onorato, Stephen A. Zappala, Jr., Allegheny County District Attorney Detectives, Terrance O’Leary, Wesley McClellan, Michael Horgan, and James Stocker (“County Defendants”) should not be dismissed for failure to serve pursuant to Rule 4(m). (Docket No. 6). The Order to Show Cause directed Plaintiff to respond by November 29, 2011; however, Plaintiff failed to do so. On December 7, 2011, I entered an order dismissing the County Defendants from this action without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (Docket No. 7).

On December 9, 2011, I issued an Order to Show Cause why the City Defendants should not be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). (Docket No. 9). The Order to Show cause directed Plaintiff to respond by December 30, 2011; however, Plaintiff failed to do so. Plaintiff also failed to appear for his noticed deposition or otherwise participate in discovery.

Accordingly, this 11th day of January, 2012, it is ordered that the above-captioned action against Defendants City of Pittsburgh, Pittsburgh Bureau of Police-Department of Public Safety, and Nathan Harper, is hereby dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

BY THE COURT:

/s/ Donetta W. Ambrose
Donetta W. Ambrose
Senior U.S. District Judge